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# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE THE APPLICATION OF: A. Ninchiyoji, et al.

SERIAL NO.: 09/487,111

FILED: November 9, 1999

TITLE: Sparkling Low Alcohol Beverage Sake And Producing Method Thereof

COMMISSIONER FOR PATENTS  
P.O. BOX 1450  
ALEXANDRIA, VA 22313-1450

SIR:

TRANSMITTED HERewith IS AN ☒ AMENDMENT, ☐ REPLY, ☐ AMENDMENT AFTER FINAL REJECTION IN THE ABOVE IDENTIFIED APPLICATION.

☐ Small entity status of this application under 37 C.F.R. 1.9 and 1.27 has been established by a verified statement previously submitted.

☐ A verified statement to establish small entity status under 37 C.F.R. 1.9 and 1.27 is enclosed.

☒ No additional fee is required.

THE FEE HAS BEEN CALCULATED AS SHOWN BELOW:

CLAIMS	REMAINING AFTER AMENDMENT		HIGH.# PREV. PAID FOR	PRESENT EXTRA	SMALL ENTITY RATE ADD'L FEE	OTHER THAN A SMALL ENTITY RATE ADD'L FEE
TOTAL	11	MINUS	20	- 0	X9-\$	X18-\$0
INDEP.	1	MINUS	3	- 0	X43-\$	X86-\$0

<input type="checkbox"/> FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM			+145-\$	+290-\$
	TOTAL ADD'L FEE			-0-

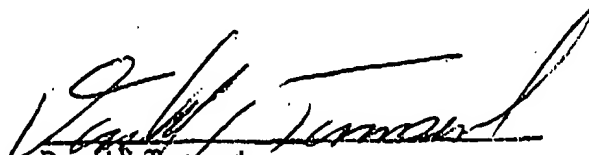
☒ The Commissioner is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. 20-1424. A duplicate copy of this sheet is attached.

- ☒ Any additional filing fees under 37 C.F.R. 1.16 for the presentation of extra claims.
- ☒ Any patent application processing fees under 37 C.F.R. 1.17.
- ☒ Any extensions of time under 37 C.F.R. 1.17.

☐ Please charge my deposit account No. 20-1424 in the amount of \$

☐ A check in the amount \$ -0- is attached.

Date: July 6, 2004

  
 Donald E. Townsend  
 Attorney of Record  
 Registration No. 22,069

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SUD-002-USA-P

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:  
**A, Ninjouji, et al.**

Serial No.: **09/437,111**

Art Unit: **1761**

Filed: **November 9, 1999**

Examiner: **C. Sherrer**

For: **Sparkling Low Alcoholic Sake And Producing Method Thereof**

**Petition for Rescindment of Abandonment**  
**Pursuant To MPEP 711.03 and 37 C.F.R. 1.181(a)**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In accordance with 37 C.F.R. 1.10(c) through 37 C.F.R. 1.10(e), the undersigned hereby petitions the Director of the USPTO to withdraw the holding of abandonment in the above-identified application. It is hereby asserted that there is no abandonment in fact in the instant application, as the period for reply has yet to expire.

In particular, an Office Action was issued in the above-identified application on May 3, 2004 (copy attached hereto), in which it was stated that the "applicant is given a shortened statutory period of ONE MONTH or THIRTY DAYS from the mailing

date of this letter, whichever is longer, to submit a complete reply. This statutory period supersedes the time period set in the prior Office Action. This time period may be extended pursuant to 37 C.F.R. 1.136(a)."

The undersigned interprets the above statements to mean that reply to the Office Action was due on June 3, 2004, and could be extended pursuant to 37 C.F.R. 1.136(a). Thus, it is believed that up to 5 months of extensions of time could be obtained by filing a petition under 37 C.F.R. 1.136(a), and paying the appropriate government fee (i.e., a response to the Office Action in question can be filed herein up to November 3, 2004 with the payment of appropriate government fees).

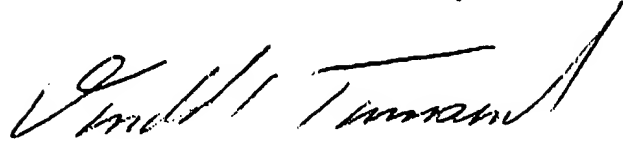
However, a Notice of Abandonment (copy attached hereto) was issued in the above-identified application on June 21, 2004. Upon discussing this matter with Examiner Sherrer, the Examiner stated that he telephoned the undersigned to inquire about the filing of a response to the Office Action, and left a voicemail concerning same. However, the undersigned did not receive said voicemail. Thereafter, when not receiving a prompt return telephone call from the undersigned, the Examiner proceeded to issue a Notice of Abandonment herein.

The undersigned contends that the issuance of this Notice of Abandonment is premature, in view of the response time stated in the Office Action mailed May 3, 2004. Further, the undersigned contends that failure to promptly respond to a telephone inquiry does not constitute grounds for abandonment. Rather, it is believed that time periods provided in written correspondence from the USPTO in patent applications take priority over oral inquiries from Examiners.

Attached hereto is a Response to the Office Action mailed May 3, 2004, as well as a Petition for Extension of Time pursuant to 37 C.F.R. 1.136(a), and filing fee for same. In view of the filing of same, it is believed that the undersigned has properly and timely responded to the Office Action mailed May 3, 2004, and that prosecution of the instant application should be continued uninterrupted.

In view of the above, it is believed that the Director would be justified in withdrawing the holding of abandonment herein pursuant to 37 C.F.R. 1.181(a). Withdrawal of the holding of abandonment herein is accordingly respectfully requested.

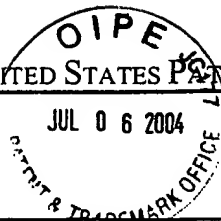
Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Donald E. Townsend". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Donald E. Townsend  
Reg. No. 22,069



UNITED STATES PATENT AND TRADEMARK OFFICE



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/437,111	10/16/2001	AKITSUGA NINJOUJI	SUD-002-USA-	7535

7590 06/21/2004

TOWNSEND & BANTA  
601 Pennsylvania Avenue, N. W.  
Suite 900 South Building  
Washington, DC 20004

EXAMINER

SHERRER, CURTIS EDWARD

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 06/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



# Notice of Abandonment

Application No.	Applicant(s)	
09/437,111	NINJOUJI ET AL.	
Examiner	Art Unit	
Curtis E. Sherrer, Esq.	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

- ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 03 May 2004.
  - ☐ A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - ☐ A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.  
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - ☐ A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - ☒ No reply has been received.
- ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - ☐ The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - ☐ The issue fee and publication fee, if applicable, has not been received.
- ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - ☐ Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - ☐ No corrected drawings have been received.
- ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
- ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
- ☐ The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
- ☐ The reason(s) below:

Curtis E. Sherrer, Esq.  
Primary Examiner  
Art Unit: 1761

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.





UNITED STATES PATENT AND TRADEMARK OFFICE

JUL 06 2004

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/437,111	10/16/2001	AKITSUGA NINJOUJI	SUD-002-USA-	7535

7590

05/03/2004

TOWNSEND & BANTA  
601 Pennsylvania Avenue, N. W.  
Suite 900 South Building  
Washington, DC 20004



EXAMINER

SHERRER, CURTIS EDWARD

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 05/03/2004

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**U.S. Patent and Trademark Office**

Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

APPLICATION NO/ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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09/437,111

Ninjouji

EXAMINER

C. Sherrer

ART UNIT

PAPER

1761

043004

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

**Commissioner for Patents**

The timely submission under 37 CFR 1.121(C) filed on 02/04/04 is not fully responsive to the prior Office action because applicants indicate certain claims are cancelled or amended, but this statement does not accurately reflect the submitted claims. It is not clear what claims applicants intend to be prosecuted. Since the submission appears to be a *bona fide* attempt to provide a complete reply to the prior Office action, applicant is given a shortened statutory period of ONE MONTH or THIRTY DAYS from the mailing date of this letter, whichever is longer, to submit a complete reply. This shortened statutory period supersedes the time period set in the prior Office action. This time period may be extended pursuant to 37 CFR 1.136(a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis E. Sherrer, Esq. whose telephone number is 571-272-1406. The examiner can normally be reached on Tuesday-Friday, 8AM-6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Curtis E. Sherrer, Esq.  
Primary Examiner  
Art Unit: 1761



**DOCKET NO. SUD-002-USA-P**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:

**A. Ninjouji, et al.**

Serial No.: **09/437,111**

Art Unit: **1761**

Filed: **November 9, 1999**

Examiner: **C. Sherrer**

**For: Sparkling Low Alcoholic Beverage Sake And Producing Method Thereof**

**AMENDMENT**

**BOX NON-FEE AMENDMENT**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Responsive to the Office Action mailed on May 3, 2004, (the time for response to which having been extended by virtue of a petition under 37 CFR 1.136(a) and requisite fee filed herewith), in the matter of the above-identified application, kindly amend the same as follows:

**IN THE CLAIMS:**

Kindly amend claims 1, 3, 5 and 8-12 as follows:

1. (Currently Amended) A method of producing sparkling low alcohol content sake comprising the steps of:

saccharifying and fermenting steamed rice and malted rice (koji) ~~in the presence of one or more acids to produce low alcohol content unrefined sake (moromi);~~ under the conditions that acidity exceeds 3.5 for at least one moment in the process during a stage of unrefined sake (moromi); wherein acidity is a titratable amount (ml.) with 0.1 N NaOH needed to neutralize 10ml of Japanese sake;

filtering ~~said a part of~~ low alcohol content alcoholic unrefined sake (moromi) with a coarse mesh filter; or centrifuging the same; ~~so as to separate turbid liquid filtrate having fermentation activity containing yeast contained therein from a first clear liquid filtrate;~~

~~further separating a second clear~~ a clear liquid filtrate from ~~the turbid liquid filtrate having fermentation activity containing yeast by compressed filtration of said turbid liquid filtrate~~ another part of said low alcoholic unrefined sake (morami) by compressed filtration; and

blending said turbid liquid filtrate and ~~the first and second~~ said clear liquid filtrate ~~obtained in the above two steps, to produce a fermentation liquid, in a sealed vessel within a closed system;~~ and

~~fermenting the fermentation liquid.~~ in a vessel and airtightly sealing said vessel.

2. (Cancelled)

3. (Currently Amended) The method of producing sparkling low alcohol content sake according to claim 2 13, wherein ~~after the sealing in the vessel~~ after sealing of the vessel pasteurization is conducted when the ~~fermentation liquid in said sealed vessel having~~ therein reaches an alcoholic content of 4 – 6% vol./vol. by vol., Japanese sake scaling of between -70 and -90, and an acidity of 3 – 4 pH.

4. (Cancelled)

5. (Currently Amended) The method of producing sparkling low alcohol content sake according to claim 4 14 , wherein carbon dioxide is added into the said clear liquid filtrate, ~~when~~ which is then bottled.

6. (Cancelled)

7. (Withdrawn) The sparkling low alcohol content sake according to claim 6, wherein the absorbancy at 660 nm is in the range between 0 and 0.01.

8. (Currently Amended) The method of producing sparkling low alcohol content sake according to claim 1, wherein the turbid liquid filtrate ~~unrefined sake (moromi)~~ and ~~the first and second clear liquid filtrates~~ liquid filtrate are blended in a blend ratio of from 1:10 to 1:30.

9. (Currently Amended) The method of producing sparkling low alcohol content sake according to claim 1, wherein fermentation is carried out ~~for~~ from 5 days to 2 weeks.

10. (Currently Amended) The method of producing sparkling low alcohol content sake according to claim ~~4~~ 9, wherein fermentation is carried out at a temperature of from 6°C to 10°C.

11. (Currently Amended) The method of producing sparkling low alcohol content sake

according to claim + 9, wherein fermentation is carried out for 2 weeks at 10°C.

12. (Currently Amended) The method of producing sparkling low alcohol content sake according to claim + 9, wherein the saccharifying and fermenting of steamed rice and malted rice (koji) is carried out in the presence of lactic acid.

Kindly add new Claims 13 and 14 as follows:

13. (New) The method of producing sparkling low alcohol content sake according to claim 1, wherein fermentation is continued until an inner gas pressure in the vessel produced by fermentation reaches 2 – 5 kg/cm<sup>2</sup>.

14. (New) The method of producing sparkling low alcohol content sake according to claim 1, wherein fermentation liquid is filtered within a closed system, and the clear liquid filtrate is sealed within the vessel when said turbid liquid filtrate and said clear liquid filtrate are blended and fermented in the sealed vessel, and fermented liquid in the sealed vessel reaches an alcoholic concentration of 4 – 6% by vol., Japanese sake scaling between -70 and -90, an acidity of 3 – 4, and an inner gas pressure in the sealed vessel is 2 -5 kg/cm<sup>2</sup>.

**REMARKS**

All of the claims currently in the case are presented above. New Claim 13 corresponds closely to original Claim 2 and new Claim 14 corresponds closely to original Claim 4. Claims 1, 3, 5 and 8-12 have been amended to more definitely set forth the invention and obviate the rejection in the previous office actions. Claims 1, 3, 5, and 7-14 are in the application, claims 2, 4 and 6 having been previously cancelled, and Claim 7 withdrawn from consideration as being directed to a non-elected invention.

The present amendment of the claims is believed to clarify some of the language used in the original claims. In particular, the term “multiple acids” used in original claim 1 is defined in the specification on page 4, lines 4-6, as “a condition that acidity exceeds 3.5 at least one moment in the process during stage of unrefined sake(morami)”. This definition has been substituted in the claims for the term “multiple acids”.

Further, the term “acidity” used in this definition of multiple acids is defined in the specification on page 4, lines 6-7 as “titratable acidity with 0.1 N NaOH”. Thus, claim 1 has been amended to define “acidity” in language which would be understood by persons skilled in the art as a “titratable amount (ml.) with 0.1 N NaOH needed to neutralize 10 ml. of Japanese sake”.

Additionally, the claims have been amended to provide proper antecedent support and to use consistent language in all of the claims. The present amendment is deemed not to introduce new matter.

Reconsideration is again respectfully requested of the rejection of claims 1-3 under 35

U.S.C. § 102(b) as being anticipated by Ninchiyouji, et al. As previously mentioned, it is believed that the present application is entitled to a U.S. filing date of November 9, 1999 and a priority date of December 29, 1998 as a matter of law. The cited Ninchiyouji, et al. reference has a publication date of November 10, 1998. Thus, the cited Ninchiyouji, et al. reference was published less than one year before both the actual U.S. filing date of the present application and the effective priority date. Therefore, it is believed that the Ninchiyouji, et al. reference fails to qualify as a reference under 35 U.S.C. § 102(b) since it was not patented more than one year prior to the date of application for patent in the United States as required by 35 U.S.C. § 102(b). Withdrawal of the rejection is accordingly respectfully requested.

In view of the revision of the claims, and the comments currently and previously presented with respect to the prior art and the previous rejection under 35 U.S.C. § 112, the present amendment is believed to fully comply with the requirements of the Office Action mailed May 3, 2004 and the office action mailed August 1, 2003. Consequently, the application is now believed to be in condition for allowance. Early action and allowance thereof is accordingly respectfully requested. In the event there is any reason why the application cannot be allowed at the present time, it is respectfully requested that the Examiner contact the undersigned at the number listed below to resolve any problems.

Respectfully submitted,

TOWNSEND & BANTA



Donald E. Townsend  
Reg. No. 22,069



Customer No. 27955

Date: July 6, 2004

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